

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WT Docket No. 99-168

In the Matter of)
)
Service Rules for the 746-764)
and 776-794 MHz Bands, and)
Revisions to Part 27 of the Commission's Rules)

To: The Commission

REPLY COMMENTS OF KM COMMUNICATIONS, INC.

KM Communications, Inc. ("KM"), by its counsel, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits these Reply Comments in reply to certain comments filed by various parties in response to the Notice of Proposed Rulemaking in the above-referenced proceeding.¹ In the NPRM, the Commission proposes rules for the auction and use of spectrum in the 746-764 and 776-794 MHz bands (the "700 MHz Band"), the former television Channels 60-62 and 65-67 which were recently reallocated.²

1. KM is the permittee or licensee of full power and low power television ("LPTV") broadcast stations, and has applications pending for additional new full power television stations that will be awarded by competitive bidding. KM filed comments to the NPRM, urging the Commission to, among other things: (i) license some, if not all, of the 700 MHz Band in 6 MHz

¹ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, Notice of Proposed Rulemaking, FCC 99-97 (released June 3, 1999) ("NPRM").

² See Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, Report and Order, FCC 97-421, 12 FCC Rcd 22,953 (1998) ("Reallocation Order").

blocks that correspond to the existing television channelization scheme; (ii) auction the 700 MHz Band in single blocks, instead of "pairing" spectrum ; (iii) license spectrum to geographic service areas that are no larger than the 52 Major Economic Areas ("MEAs") and no smaller than the 172 Economic Areas ("EAs"); (iv) adopt a bidding credit in any 700 MHz Band auction for any participant who is an LPTV licensee that has been or will be displaced by the transition to DTV, or, alternatively, refrain from auctioning any spectrum in the 700 MHz Band until after the DTV transition has been completed.

2. Certain commenters to the NPRM ignore the Commission's clearly established rules by arguing that either all or portions of the 700 MHz Band should be reserved exclusively for services other than broadcast use.³ The Commission expressly rejected this exclusivity argument in the Reallocation Order, and this proceeding to adopt service and auction rules for the 700 MHz Band is an inappropriate forum for reconsideration of that decision. In addition, such an approach undermines the clear Congressional mandate established for the 700 MHz Band - the most flexible use of the spectrum as possible.⁴ To attempt to place a greater weight on one service would violate the goal of equal access, thereby harming the public interest by limiting the possible innovation of new and different services. KM agrees with the argument introduced by SBC

³ See, e.g., Comments of U.S. West, Inc. ("U.S. West") (filed on July 19, 1999) (arguing that the 700 MHz Band should be reserved exclusively for broadband wireless services, prohibiting any broadcast operations); Comments of Southern Communications Services, Inc. ("Southern") (filed on July 19, 1999) (requesting that the Commission designate 18 MHz of the 700 MHz Band exclusively for the provision of SMR service); Comments of American Mobile Telecommunications Association, Inc. ("AMTA") (filed on July 19, 1999) (requesting that the Commission designate 6 MHz from the 700 MHz Band be used solely for special commercial wireless services).

⁴ 47 U.S.C. § 303(y)(2).

Communications, Inc. ("SBC") in its comments, in that the only way in which the public will realize the benefits of a national telecommunications infrastructure would be through making the 700 MHz Band available for commercial use in the most flexible manner possible.⁵

3. Further, the claims made that interference will result if both broadcast and non-broadcast services operate in the 700 MHz Band are premature and speculative. Because of the myriad of ways in which the spectrum in the 700 MHz Band could be utilized, prohibiting any parties from using the spectrum at this point would be completely arbitrary, suffocating the potential for technological growth. As SBC noted in its comments, any interference should be adequately controlled by field strength measurements, giving operators ample information by which to adjust their services.⁶ Therefore, KM urges the Commission to disregard the unfounded claims of interference and limited spectrum availability raised by certain commenters in this proceeding, and proceed with the fair and equitable distribution of spectrum in the 700 MHz Band to all commercial users, including broadcasters.

4. KM also disagrees with certain of the proposals offered by commenters as to how the spectrum in the 700 MHz Band should be licensed.⁷ As noted, the Commission envisions new and innovative services being created in the 700MHz Band. At this point, however, it is unknown

⁵ Comments of SBC Communications, Inc. ("SBC") at 2 (filed on July 19, 1999).

⁶ Comments of SBC at 4-5.

⁷ See Comments of Association for Maximum Service Television ("AMST") (filed on July 19, 1999) (suggesting that the spectrum should be licensed as one single 36 MHz block); Comments of SBC (filed on July 19, 1999) (proposing the each spectrum area should have two licenses of 18 MHz paired spectrum); Comments of AMTA (proposing the licensing of non-consumer commercial spectrum in blocks of .5 MHz).

how much spectrum would be required for the provision of these new services. Therefore, in order to avoid undue confusion, and to have a clear and established starting point at which values could be properly determined for auction purposes, the 700 MHz Band should be licensed in 6 MHz blocks, corresponding to the existing television channelization scheme. As the Commission noted in its NPRM, many services only require 6 MHz or less of spectrum (i.e., paging and messaging services, mobile voice services, analog or digital video services, or point-to-point microwave services). Because many of these same or technically comparable services will be offered in the 700 MHz Band, allocating the spectrum in 6 MHz blocks would be highly efficient, facilitating any coordination necessary between the operations of licensees in the spectrum. To allocate on any larger basis would undermine the auction process, as many parties, such as those interested in using the spectrum to provide broadcast-related services, would be left with unnecessary spectrum which it would either have to try to sell to other parties, or which would be orphaned and left unused, severely undermining the public interest.

5. KM reiterates the point raised in its own comments and that is supported by AMST -- spectrum in the 700 MHz Band should not be licensed on a paired basis. As noted, it is unclear how many services would actually need to have paired spectrum to provide its services, and therefore, instead of forcing an applicant to pay for more spectrum than it needs, it would be more efficient to instead require an applicant who needs paired spectrum to simply bid for two blocks of spectrum at the auction.⁸ To the extent that over time it is discovered that the majority of bidders and service providers in the 700 MHz Band do require the use of paired spectrum, KM

⁸ See Comments of AMST at 9.

does not object to a modification of the licensing rules at that point. To require paired spectrum now, however, would be entirely speculative, creating the potential for inefficient use of spectrum, and further harm to the public interest.

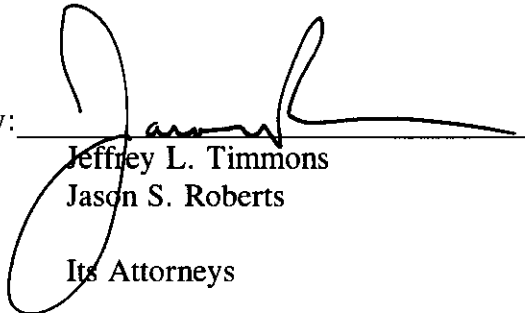
6. Finally, KM reiterates the point that because numerous LPTV stations have been or will be displaced from operation as a result of the DTV operations, and because the relief adopted for LPTV stations in the DTV proceedings has been inadequate, the Commission should provide adequate remedy to these displaced stations. KM proposes that the Commission grant a bidding credit to any displaced LPTV licensee for the auction of spectrum in the 700 MHz Band.

KM is a minority and female owned corporation, and it has made a substantial investment in its LPTV stations in an effort to provide a unique public service. A bidding credit would help ensure the continued participation of LPTV stations in creating new and innovative ways of using broadcast spectrum in a manner that would bes suit the needs of the public in its markets, and help prevent the wholesale displacement of these stations.

7. Therefore, KM respectfully requests that the Commission adopt service and auction rules for the 700 MHz Band that are consistent with KM's previously filed comments and the reply comments made herein, and specifically which make the broadcast use of that spectrum feasible.

Respectfully submitted,

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